

2008

International Legal Updates

Matthew Solis

American University Washington College of Law

Jennifer Jaimes

American University Washington College of Law

Rukayya Furo

American University Washington College of Law

Ari Levin

American University Washington College of Law

Morgan E. Rog

American University Washington College of Law

See next page for additional authors

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/hrbrief>



Part of the [Human Rights Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Solis, Matthew, Jennifer Jaimes, Rukayya Furo, Ari Levin, Morgan E. Rog, Mahreen Gillani, and Alex Cheng. "International Legal Updates." Human Rights Brief 15, no.2 (2008): 28-37, 46.

This Column is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Human Rights Brief by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact kclay@wcl.american.edu.

International Legal Updates

Authors

Matthew Solis, Jennifer Jaimes, Rukayya Furo, Ari Levin, Morgan E. Rog, Mahreen Gillani, and Alex Cheng

INTERNATIONAL LEGAL UPDATES

UNITED STATES

IRAQIS SUE PRIVATE U.S. MILITARY CONTRACTORS IN U.S. COURT

On September 16, 2007, a shootout occurred at a busy highway intersection in Baghdad, Iraq. Blackwater USA, a private security corporation contracted by the U.S. government to provide security to U.S. officials and military support to the region, allegedly opened fire in the middle of the intersection without provocation, killing 17 Iraqi civilians. Many bystanders were shot when they attempted to flee. Blackwater alleges that it responded in self-defense after its guards were fired upon. The U.S. Federal Bureau of Investigation (FBI) reported that among the 17 killings, only three may have been justified by the guards' fear that they were in imminent danger and the remaining 14 killings were without cause.

The recent events were neither the first instances of Blackwater's violent actions in Iraq, nor unique. In May 2005 a Blackwater helicopter and armored vehicle released a potent tear gas without provocation against Iraqi and U.S. soldiers guarding a checkpoint, which rendered soldiers and highway travelers temporarily blind. On September 17, after learning that there had been over 200 recorded shootings by Blackwater guards in Iraq since 2005, the Interior Ministry of Iraq revoked Blackwater's license to operate in Iraq.

In addition to recent Iraqi investigations, the U.S. Congress reported that on at least two occasions, Blackwater paid modest sums to the families of victims in exchange for their silence. Further findings allege that U.S. State Department officials approved of such payments.

While the FBI and U.S. Department of Justice (DOJ) investigations remain ongoing, the victims of the September 16 attack are seeking justice through civil litigation in the U.S. court system. On October 11, the Center for Constitutional Rights (CCR) filed a complaint on behalf of an injured Iraqi civilian and three deceased

victims' families, later amended to two injured civilians and five families, against Blackwater USA, Blackwater Security Consulting LLC, the Prince Group (a holding company), and Erik Prince (founder of Blackwater). The complaint alleges that Blackwater "created and fostered a culture of lawlessness amongst its employees, encouraging them to act in the company's financial interests at the expense of innocent human life." The complaint accuses Blackwater of authorizing excessive use of force through its failure to investigate or punish its employees. In addition, it contends that Blackwater knowingly and routinely deploys heavily armed soldiers in Baghdad who use steroids and other drugs that affect and impair judgment. Plaintiffs seek both compensatory and punitive damages.

Meanwhile, the DOJ notified Congress during a private meeting in December that it might be unable to file charges against Blackwater due to a number of legal obstacles, including the limited immunity offered to Blackwater employees in exchange for their testimony during the initial investigation into the September 16 incident.

The official joint recognition and condemnation of Blackwater's actions by the Iraqi and U.S. governments is essential to the restoration of stability in the region, and the actions of private security contractors in Iraq continue to threaten the credibility and safety of U.S. military forces.

U.S. GOVERNMENT CLOSES LEGAL LOOPHOLE THAT GRANTED IMMUNITY TO PERPETRATORS OF GENOCIDE

On December 21, 2007, President Bush signed into law the Genocide Accountability Act (GAA). The GAA closes a loophole that allowed individuals who participated in committing genocide outside the United States to avoid prosecution within the United States. Prior to the GAA, individuals could be found guilty of genocide only if the crime was committed within

the United States or by a U.S. national outside the country. The GAA is aimed specifically at perpetrators of the Rwandan and Bosnian Genocides of the mid 1990s, since individuals who participated in those atrocities were thought to be escaping justice while residing in the United States under false pretenses. Senator Tom Coburn (R-OK), who voted for the passage of GAA stated, "Under no circumstances should an individual who participated in genocide be allowed to enjoy safe haven within the United States ... Persons who committed these heinous crimes should be punished to the fullest extent of the law."

The GAA is the first legislation to be proposed by the Senate Subcommittee on Human Rights Under the Law, chaired by Senator Dick Durbin (D-IL). A primary aim of the subcommittee is to combat genocide. Members of the committee and legal community consider the GAA's passage a huge victory. According to law professor Diane Orentlicher, who testified before Congress in February and October 2007, "By passing the Genocide Accountability Act of 2007, Congress has struck a major blow against the impunity that sustains perpetrators of ghastly crimes. From now on, those who have violated the basic code of humanity will know they cannot find sanctuary here."

While the GAA corrected an error in achieving justice for past genocides, the U.S. Congress also made efforts to address the current genocide in Darfur. On December 31, 2007, President Bush signed into law the Sudan Accountability and Divestment Act (SADA), which allows state and local governments within the United States to cease doing business with companies with economic ties in Sudan and prohibits federal contracts with any such companies. Under SADA, mutual funds and private pension managers may not sell investments in companies affiliated with Sudan, and states may prohibit debt financing for companies doing business in Sudan. The legislation unanimously passed both houses of Congress, but to ease worries that it could potentially interfere with his

ability to conduct foreign policy, President Bush attached a signing statement which permits him to overrule divestment decisions by states that may interfere with the administration of foreign policy. Darfur activist groups including the Save Darfur Coalition, Genocide Intervention Network, and STAND called for President Bush to take measures to ensure that SADA is strictly enforced.

While the effectiveness of GAA and SADA remain to be seen, the laws gained passage at a time of mounting concern about inaction by the United States, and, hopefully, reflect a growing U.S. government desire to combat genocide and bring its perpetrators to justice.

HEALTHCARE A GROWING CONCERN TO UNITED STATES AND PRESIDENTIAL CANDIDATES

The U.S. healthcare system is a key issue in the 2008 U.S. Presidential Election. Both Republicans and Democrats find numerous flaws in the current system, which has been described as confusing, exclusionary, and costly. The average U.S. family spent \$12,106 on healthcare in 2006. A 2005 U.S. Census Bureau report found that 46.6 million U.S. citizens are currently uninsured. The U.S. healthcare system is based on a blend of public and private for-profit healthcare. Private hospitals are motivated by profit maximization in order to please shareholders, while there is little incentive to improve the quality of care. Not-for-profit and teaching hospitals have seven and 25 percent lower death rates respectively, in comparison to for-profit hospitals. Internationally, this policy would pose serious questions about the violation of the basic human right of equal access to healthcare. As the country begins to view these statistics as a crisis, the candidates, mostly driven by the positions of their respective political parties, have responded with comprehensive plans detailing how each would resolve the critical issue.

The Republican candidates largely seek to allow the market, rather than a federally mandated system of universal coverage, to correct the country's privatized health insurance system. This raises a number of potential human rights violations. Most Republicans favor a system that allows

private insurers and public programs the ability to reward the healthy behavior of individuals.

The Democratic approach calls for a system of mixed private and public healthcare with contribution mandates for employers and individuals, and tax incentives designed to regulate the health insurance market. Democrats seek to reverse the trend of falling employer-provided healthcare coverage, which has dropped from 69 percent to 60 percent since the year 2000. The Democratic-proposed mandate would require employers to either provide coverage for their employees or pay into a public healthcare fund. The leading candidates' healthcare plans are similar, with few distinguishing characteristics, including either mandating individual health insurance for every U.S. citizen or for children only. The primary source of funding for the candidates' programs would be the repeal of tax cuts granted by President Bush for individuals earning over \$250,000 annually.

While there are significant differences in the policies of the two political parties, both still fail to meet certain standards. Neither party supports a shift from the current system, which focuses on healthcare as a commodity, to one that supports it as an individual right. As a result, human rights concepts of equity give way to a struggle of cost reduction and increased access within a privatized profit-based system. As the war in Iraq begins to be seen as less of a priority in the election, domestic issues such as whether there is a right for individuals of all incomes to have access to healthcare have an opportunity to impact the election of the next U.S. president.

LATIN AMERICA

HONDURAS: LATIN AMERICAN WATER TRIBUNAL HOLDS ENTREMARES DE HONDURAS LIABLE

Before mining activities by Entremares de Honduras, S.A., a subsidiary of Canada's Goldcorp Inc., polluted and dried up vital water sources, the Siria Valley's rivers supplied communities in central Honduras with drinking water. The Honduran government initially ignored local complaints about the lack of water and water contamination created by Entremares de Honduras. As a result, the Siria Valley Regional Environmental Committee took the case to

the Latin American Water Tribunal, where Entremares de Honduras was found liable for "inappropriate use and contamination of water sources in the Siria Valley region and for causing harm and risk to the ecosystem and to human health."

In 1994, Entremares de Honduras, S.A. began to operate in Tegucigalpa. Four years later, an American company, Glamis Gold Limited, bought the Honduran company. The company changed hands again in 2006 when it was purchased by Goldcorp, Inc. In 1998, immediately after Hurricane Mitch, the country experienced a period of mining law reform stimulated by Congressional desire to jump start the economy. The General Mining Law of 1999 reduced mineral export regulation, guaranteed mining companies greater access to water supplies, and dismantled environmental restrictions. According to mining industry representatives, these reforms were a response to the need to create more jobs and a modernized mining industry, and to stimulate foreign investment. From 1968 through 1998, not a single foreign company opened operations in Honduras.

The government granted Entremares special concessions in 1998. Since then the company has been using cyanide to extract gold from mined ore, a cheap method that has been banned in some countries and severely restricted in others.

Two years later, communities living around the mines began to complain of a water shortage, water contamination, and an increase of illnesses and skin disorders. But the complaints were futile, as neither the government nor Entremares did anything. On January 25, 2000, the Siria Valley Regional Environmental Committee denounced the destruction of the forest, harm to the environment, and contamination of the water. It called for a government commission, but the company suppressed test results confirming water sources were contaminated with arsenic and mercury. Despite the complaints and the hidden reports, the Ministry of Natural Resources and Environment (SERNA) allowed Entremares to dig five new wells.

SERNA confirmed that the water in Siria Valley was contaminated in September 2006. A year later, SERNA imposed a one million Lempira (\$55,000)

fine on Entremares for polluting and damaging activities that violated Honduran environmental laws and the company's contract with the government. In response, Entremares promised to regenerate the forests affected but refused to pay the fine. Gabino Santos Carvajal, the Director of the Mining Association, stated that a court decision was necessary to prove that Entremares committed a crime, and that scientific reports alone were insufficient. On the other hand, Caritas Tegucigalpa, a development and social service organization, suggested that Entremares refused to pay because it did not want to accept liability, and because it suspected that the Honduran legal system was too weak to enforce a payment.

The Siria Valley Regional Environmental Committee responded by bringing the case before the Latin American Water Tribunal, an autonomous, independent, and international organization of environmental justice. Although its decision is non-binding, the tribunal found that Entremares is accountable for the damage to the environment as a result of irresponsible use of water in Siria Valley, Honduras. Entremares has not issued a response to the hearing. However, on October 11, 2007, the tribunal held that Entremares must take responsibility for inappropriate use and contamination of water sources, should suspend all mining activity in the valley, and should compensate the communities for the damage caused.

BELIZE: SUPREME COURT RULING SUPPORTS MAYAN CUSTOMARY LAND RIGHTS

In a landmark legal victory for Belize's Maya population, the Supreme Court of Belize recently granted Maya communities in Southern Belize customary rights to and official recognition of their lands. The Government of Belize, however, has yet to demarcate and issue titles for these lands.

In Belize, the Mayans are the largest indigenous group with the majority of them living in villages throughout the country. The British established some of these villages as official Maya indigenous reservations for the benefit of the Maya people. The Belize government asserted ownership to these villages. Other unofficial Maya indigenous villages are located

on currently designated "national land." These communities do not enjoy the special protections that come with the official recognition of a Maya indigenous reservation. Although the existence and location of these communities is common knowledge among the people of Belize, for many years the government failed to recognize Maya land with official titles. The government's policy of non-recognition is based on British colonial explorers' original map showing these lands to be uninhabited.

Since 1993, the Government of Belize has granted permits to various foreign companies to prospect land in the Toledo district. The Toledo district is both recognized as "national land," and is claimed by the Mayans. In addition to allowing exploration of the land, the government has granted at least 17 logging concessions, covering a total area of 480,000 acres to foreign companies. The government set up only a fraction of the 500,000 acres as nine Maya reserves. Maya representatives filed suit in 2000 against the government, leading to the signing of the "Ten Points of Agreement," which stipulates that the government recognize Maya land rights. The government failed to grant any land titles and continued to allow foreign companies to exploit contested land. On April 3, 2007, representatives of the Maya villages of Conejo and Santa Cruz filed claims in two separate lawsuits, alleging that the government was in violation of the Constitution of Belize because it failed to recognize, protect, and respect the customary land rights of the Maya community based on traditional land use and occupation. The Supreme Court consolidated the lawsuits into one proceeding.

On October 18, 2007, in a 67-page judgment, the Supreme Court of Belize affirmed the customary land rights of Mayans residing in the villages of Conejo and Santa Cruz. The judgment recognized the customary right of all Maya villages to their land, based on traditional use and occupancy. The judgment states that the government has violated the rights of the Mayans in its failure to protect their land. The Supreme Court asked the government to demarcate the rights of Mayans and provide them with official land titles, and to stop giving land use permits to outsiders. This is the first legal decision citing the recent United Nations Declaration on the

Rights of Indigenous Peoples, adopted by the General Assembly in September of last year. As a result, it has significant precedential value for indigenous rights cases across the globe.

POPULAR REFERENDUM DEFEATS PROPOSED VENEZUELAN CONSTITUTIONAL CHANGES

On August 15, 2007, Venezuelan President Hugo Chavez proposed to amend 33 articles of Venezuela's 350-article constitution to make it consistent with his socialist agenda. According to Chavez, the proposed reforms were necessary to complete the transition to a socialist republic.

Detractors said the reforms formed part of a strategy to increase Chavez's power. Human Rights Watch warned that the proposals included changes that could violate international law. For example, one proposal would have increased presidential emergency powers; giving the president the power to suspend fundamental due process guarantees such as the presumption of innocence, the right to be tried by an independent and impartial tribunal and the right against self-incrimination during a state of emergency. The proposed changes would have also allowed the president to suspend citizens' rights to information. Changes perceived as positive included an expansion of social security benefits to workers and an expansion of the existing constitutional prohibition on discrimination based on sexual and political orientation.

The proposals led those Venezuelans in opposition to Chavez to unite. On November 7, 2007, an anti-referendum protest turned into a riot at the Central University of Venezuela. Several days before the referendum, about 160,000 people protested in the streets. The opposition to President Chavez included some of his previous allies such as General Raul Baduel, former Minister of Defense, who publically withdrew his support of the government.

On December 2, 2007, a popular referendum narrowly defeated the proposed amendments. Despite his loss, Chavez vowed to continue his struggle to build socialism. Three days after the elections, he warned U.S. to "watch out," as he planned to launch a renewed offensive

to change the constitution. In addition, approximately one month later, Chavez announced that 2008 would be the year of “the three R’s;” revision, rectification, and re-launching.

AFRICA

DISPUTED ELECTION RESULTS SPARK CRISIS IN KENYA

Kenya, once hailed as a beacon of African democracy, has erupted in violence following a highly disputed presidential election. The election results, in which President Mwai Kibaki was re-elected over opposition member Raila Odinga, have sparked accusations of election rigging and have led to deadly clashes between members of the Luos tribe, who support Odinga, and members of the Kikuyu tribe, who support Kibaki. The Luos, who make up about 13 percent of Kenya’s population of 36 million, live mostly in the western part of the country. They also make up a large portion of the population of some of the capital Nairobi’s most notorious slums. Members of the Kikuyu tribe, who have strong economic and political power, make up about 22 percent of Kenya’s population, and come mostly from the central region of the country.

December’s election results are the closest in Kenyan history, with Kibaki reportedly beating Odinga by roughly 230,000 votes, after 8.9 million votes had been cast. Odinga had been leading the polls in the week leading up to the election. During the vote-counting on December 27, opposition party leader Odinga was about one million votes ahead of Kibaki. However, the counting process turned sour after a number of Kibaki strongholds delayed their voting results. Several election officers disappeared with ballot boxes, and others refused to answer their phones until Kibaki was eventually announced as the victor.

These incidents prompted various observer groups to determine that the vote was unfairly handled. The European Union (EU) added that it had evidence of a rigged election. Head of the EU Election Observation Mission in Kenya Alexander Lambsdorff cited “discrepancies in vote counts, election observers being turned away from polling places, and observers being refused entrance to the electoral commission vote-count room.” On

December 31, the United States, through its embassy in Nairobi, voiced its concerns over the “serious problems experienced during the voting counting process... [which] included various anomalies with respect with unrealistically high voter turnout rates, close to 100 percent in some constituencies.” International observers have since concluded that the election fell short of international best practice standards for democratic elections.

Immediately following the election results, rioters swarmed the streets, burning and looting buildings. Protesters chanting “Kibaki must go!” wielded machetes amidst the chaos. In the days following the results, more incidents of violence have been reported. Mobs of young men, armed with machetes, appear to have burned down a church where Kikuyu tribe members were seeking refuge from the violence. The Red Cross reported that at least 50 people were burned to death, including dozens of women and children. Other reported injuries included gun-shot wounds and cuts from machete-like weapons. The United Nations (UN) reported that at least 250,000 people had been displaced by the violence, and, as of January 7, the Kenyan government reported the death toll to be more than 500.

In an attempt to ease the escalating tensions and violence in the country, Ghanaian President John Kufuor, Head of the African Union (AU), arrived in Kenya on January 8 to mediate between opposition leader Odinga and President Kibaki. Odinga refused Kibaki’s invitation for an official meeting, however, describing the invitation as “public relations gimmickry.” The failure of the AU to mediate between the two parties resulted in a call for mass protests in 25 towns and cities by Odinga’s opposition party. On January 10, 2008, it was reported that former UN Secretary-General Kofi Annan would attempt to mediate between the two parties. This news came after Kibaki appointed 17 new Cabinet members, none of whom are affiliated with Odinga’s party.

GROWING NUMBER OF ACCUSATIONS OF CHILD WITCHCRAFT INCREASES CHILD HOMELESSNESS IN ANGOLA

A rising number of children in Angola are being accused of engaging in witch-

craft. Officials from one northern Angolan town report as many as 400 street children that have been accused of witchcraft, abused, and abandoned by their families. Furthermore, a report issued by the National Institute for the Child described a “massive” number of children accused of engaging in witchcraft. Fear of witchcraft is a common among Angola’s Bantu: many Bantu believe that witches can communicate with the world of the dead, causing the alleged witches’ victims misfortune, illness, and death. Families faced with disruptions in their lives will often blame a child “witch” for causing the disruptions and cast him or her out of the home.

According to Angolan officials, the rising number of children accused of witchcraft can be attributed to the long conflict that has burdened Angolan families with many hardships. Angola endured 27 years of war, leaving a large number of children orphaned. Other families struggled to feed and sustain themselves during these years. As a result, families unable to take care of their children will often accuse them of witchcraft to justify their expulsion from the home.

The Angolan government has been campaigning against the widely held belief in child witchcraft. In October 2007, the Angolan government participated in the Second Pan-African Forum on Children. In addition, Angolan delegates participated in a United Nations meeting devoted to children’s rights. The Angolan government is striving to prioritize discussions about “neglect, abuse, physical violence, emotional violence and discrimination against children ... and the phenomenon of children accused of witchcraft.”

ZAMBIAN WOMEN FACE OBSTRUCTION TO HIV MEDICATION

A recent report by Human Rights Watch (HRW) describes the abuses faced by Zambian women who are prevented access to antiretroviral medication for their treatment of HIV. According to the report, approximately 17 percent of the adult Zambian population has HIV/AIDS. Women make up about 57 percent of this number.

Zambian women face increased risks of violence and abuse at the hands of their

spouses, even upon discussion of HIV testing and treatment, and the resulting fear has prevented them from seeking services from clinics, including HIV status testing. This has delayed pursuits of HIV/AIDS treatment. These delays have resulted in many women missing clinic appointments, while others are unable to keep up with their medication.

In addition to the fear of spousal abuse, Zambian women are also facing obstruction to property rights. Women in Zambian society traditionally do not have property rights equal to those of men. Divorced or widowed women fear losing their homes or their land. As a result, women often feel forced to remain in dependent, abusive relationships or marriages. According to HRW, these women “struggled to pay for transport to clinics for HIV treatment and counseling and to afford the food they need for treatment to succeed.” Nada Ali, a researcher in the Women’s Rights Division of HRW commented, “Unless the Zambian government introduces legal and health system reform and removes the barriers to HIV treatment that women face, gender-based abuses will continue to shatter the lives of countless Zambian women in acute need of antiretroviral treatments ...”

The HRW report calls for the Zambian government to take the necessary steps to establish legislation, both civil and criminal, that will remedy and prevent domestic violence, and to finalize the draft constitution, which specifically includes provisions that prohibit discrimination against women on the basis of law, custom, culture, or tradition. Additionally, HRW is calling for the government to allow healthcare providers to respond more effectively to issues of gender-based abuses and violence.

MIDDLE EAST AND NORTH AFRICA

MOROCCO: ARRESTS FOR HOMOSEXUAL CONDUCT VIOLATE RIGHT TO PRIVACY

On December 10, 2007, the Court of First Instance in Ksar el-Kbir, Morocco convicted six men for violating Article 489 of the Moroccan Penal Code by engaging in homosexual conduct. Article 489 “criminalizes lewd or unnatural acts with an individual of the same sex,” with sentences between six months and three years

in prison and fines of 120 to 1,200 dirhams (\$15 to \$150). The men have been in detention since they were first arrested by police in November 2007, after a video of a private party that the men allegedly attended circulated on YouTube. Press reports claimed the party was a gay marriage. The court sentenced three defendants to six months in prison, two defendants to four months, and the sixth, who was also charged with the unauthorized sale of alcohol, to ten months. The case prompted violent protests in which hundreds of men and women denounced the alleged actions of the men involved.

The case raised two major human rights issues. First, criminalizing homosexual conduct is a violation of human rights under international law, and as such, Article 489 of the Moroccan Penal Code violates international law. Second, even if one accepts the law as valid, the accused were convicted without sufficient evidence to prove that there was an Article 489 violation; raising an arbitrary detention concern.

Human Rights Watch (HRW) maintains that criminalizing consensual, adult homosexual conduct violates human rights protection in international law. The International Covenant on Civil and Political Rights (ICCPR), a treaty which Morocco has ratified, bars interference with the right to privacy. According to Article 17 of the ICCPR, “No one shall be subjected to unlawful interference with his [or her] privacy.” Thus, arresting individuals for any private sexual activity would be a human rights violation. In addition, the United Nations Human Rights Committee (UNHCR), which monitors implementation of the ICCPR, has explicitly condemned laws prohibiting consensual homosexual conduct as violations of the ICCPR. UNHCR has no enforcement power but may make recommendations to the UN General Assembly.

A trial judge convicted the men despite the fact that the prosecution did not prove a violation of Article 489 of the Moroccan Penal Code. In addition to a lack of conclusive evidence demonstrating that the men were in fact at the party in question, the video also contained no indications of sexual activity. Furthermore, the video was the only evidence offered to support the

homosexual conduct violation. The trial judge refused to release the men provisionally, pending appeals.

HRW has appealed to the Moroccan government to set aside the criminal verdicts in the case. In a letter to Moroccan Justice Minister Abdelwahed Radi, HRW urged the government to drop the charges and release the men. In light of violence that ensued following their arrests, the letter also implored the government to ensure the men’s safety. The Moroccan government has yet to respond. HRW asserts that the Moroccan government must uphold their international human rights obligations and release the men immediately.

SAUDI DISSIDENT BLOGGER ARRESTED FOR POLITICAL ACTIVISM

Popular Saudi blogger Fouad al-Farhan was arrested in December for his online support of ten political activists that the Saudi government accuses of supporting terrorism. This is the first reported arrest of an online critic of the government in the kingdom. Among the thousands of male and female bloggers in the kingdom, Farhan is one of the few who uses his real name. Through his blog (www.alfarhan.org), Farhan criticizes corruption and calls for political reform. According to Farhan’s wife, he was arrested at his Jiddah office and then brought by authorities home, where his laptop was confiscated.

Although Farhan has not been officially charged with a crime, Major General Mansour al-Turki asserted that Farhan was arrested for “violating rules not related to state security.” This suggests that Farhan’s blog was not deemed to be dangerous to the national security interests of Saudi Arabia. On the contrary, the circumstances surrounding Farhan’s arrest point to the Saudi Arabian government exerting its power to suppress unpalatable political criticism. Since his arrest, Farhan has been held in indefinite detention without charge or trial.

Saudi Arabia is an absolute monarchy that restricts freedom of speech and press. The government does not allow political parties or civil rights groups to exist, nor does it permit public gatherings. Since King Abdullah took the throne in 2005, official tolerance of criticism and debate

has grown. According to the U.S. State Department's latest human rights report, however, news outlets remain censored, and internet access is restricted. In early December Farhan had been warned that he would be detained because of his online support for a group of men arrested in February 2007 who were being held without charge or trial. The Jiddah-based group — made up of academics, businessmen, and one former judge — had been accused of supporting terrorism. The men's attorney said they were arrested for political activism and their plans to form a civil rights group.

Under Article 19 of the Universal Declaration of Human Rights (UDHR), "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." The UDHR is a declaration rather than a treaty, but it embodies fundamental principles that are accepted as customary international law. Hence, Farhan's case seems to fall squarely under Article 19: under international law, bloggers should be protected from criminal charges that are based on their political criticism of a government. While the Saudi Arabian government has violated a recognized principle of international law by arresting Farhan, the UDHR provides no enforcement mechanism to compel the Saudi Arabian government to respect bloggers' freedom of expression.

More than 200 bloggers in Saudi Arabia have voiced opposition to Farhan's arrest, and bloggers from around the world are advocating for his release. Farhan's friends have maintained his blog while he is in detention. In an e-mail written prior to his arrest, Farhan indicated that he would remain in custody for three days at most if he agreed to sign a letter of apology. But Farhan has refused to apologize for his blog content, and, thus, continues to be detained at the Ministry of Interior's security service headquarters in Jiddah.

ISRAEL FUEL CUTS TO GAZA STIR FEARS OF A HUMANITARIAN CRISIS

In early January, the Israeli Supreme Court rejected a request for an injunction against fuel cuts to the Gaza Strip.

The Court refused to grant the injunction because the ten Palestinian and Israeli human rights groups responsible for the request failed to prove that the fuel cuts would harm humanitarian aid work. Israel strategically implemented the fuel cuts to stop daily rocket fire at Israel by Gaza militants. The Court ruled that reducing fuel supplies could hinder the militants' offensive against border towns. The potential for the situation to escalate into a humanitarian crisis, however, prompted the Court to monitor the effects of the fuel cuts on Gaza's civilians.

According to Gisha, one of the human rights group that challenged the fuel cuts, these measures do not stop aggression but serve to punish the civilian population of Gaza. This situation creates a balance of human suffering on both sides of the border. HRW alleges that Israel's decision to cut the fuel is a violation of a basic principle of international humanitarian law that prohibits a government that controls a territory from attacking or withholding objects essential to the survival of the civilian population. The act also allegedly violates Israel's duty as an occupying power to safeguard the health and welfare of the population under occupation. Israeli officials, however, have declared Gaza a "hostile territory," and claim that Israel is no longer obliged under international law to supply utilities to the civilian population. HRW asserts that this is a misstatement of humanitarian law, and that a mere declaration does not negate the status and obligations of an occupying power.

Israeli officials also noted that while Gaza uses the fuel received from Israel to power its electrical plant, about 70 percent of its electricity is routed directly from Israel through cables. This supply of electricity has not been stopped as a result of the fuel cuts. One Health Ministry official, however, has warned that a continued embargo could produce a health catastrophe in which doctors would have to cut electricity to infants in maternity wards or patients in open heart surgery.

On January 22, Israeli Defense Minister Ehud Barak said that he would allow a single shipment of fuel and medical supplies into the Gaza Strip. Prior to this concession, UN officials warned that food aid to hundreds of thousands of residents would

be suspended because UN trucks would run out of fuel. While a single shipment of fuel may temporarily alleviate fears of imminent crisis, the Israeli government's commitment to the fuel cutoff suggests that humanitarian concerns will continue.

EUROPE

AZERBAIJANI GOVERNMENT SUPPRESSES FREEDOM OF PRESS

Ilgar Nasibov, a correspondent for the U.S. government-funded Radio Liberty, was convicted of slander and sentenced to three months imprisonment in what was an alleged violation of the European Convention on Human Rights. Nasibov's imprisonment in December 2007 made him the tenth journalist to serve jail time in Azerbaijan that year. Media repression is a recurring problem in Azerbaijan, which imprisons more journalists than any other country in Europe or Central Asia and has the fifth-highest number of reporters behind bars in the world.

Nasibov, who reports regularly on human rights violations from Azerbaijan's semi-independent and geographically-separated region of Nakhchivan, was convicted of slander following events in early November. The Deputy Chief of the Nakhchivan City Police Department accused Nasibov's wife Malahet Nasibova, also a journalist who frequently reports on human rights abuses in the region, of being a "traitor." Nakhchivan Police Chief Ershad Ibrahimov then filed a slander lawsuit against Nasibov based on an email Nasibov sent to the President of Azerbaijan, complaining that Nakhchivan journalists were routinely harassed by local police. Nasibov was convicted of slander under Article 147.1 of the Azerbaijan Criminal Code, which typically only applies to mass media. It remains unclear how Ibrahimov learned of the email and its contents.

Nasibov was reportedly denied legal representation and taken to the basement of the police department — where torture has reportedly taken place in the past — immediately following his conviction. While he was in prison, the Azerbaijan Department of the Interior searched Nasibov's home and confiscated the couple's computer and disks. This search was carried out in connection with a separate slander lawsuit

filed against the Nasibov by Isa Habibeyli, a member of Azerbaijan's Parliament and Director of Nakhchivan State University.

Following international outcry, Nasibov was released four days after being jailed. The Nakhchivan City Court annulled the original slander suit and 90-day sentence but sentenced the journalist to one year of probation in the libel suit brought by Isa Habibeyli. Nasibov reported that although he was not subjected to physical torture, as many feared, the Nakhchivan authorities did put him under severe psychological pressure and threatened him.

Critics, including the Council of Europe and the U.S. Department of State, have issued statements of disapproval in response to the deterioration of media freedom in Azerbaijan. They declared the government's treatment of Nasibov a violation of the freedom of expression enshrined in Article 10 of the European Convention on Human Rights.

GADDAFI'S PARIS VISIT CASTS DOUBT ON SARKOZY'S COMMITMENT TO HUMAN RIGHTS

French President Nicolas Sarkozy faced strong criticism after hosting Libyan leader Muammar Gaddafi in Paris for five days in December. The trip was meant to symbolize improving relations between Libya and Europe and marked Gaddafi's first visit to France in 34 years. Since emerging from diplomatic isolation in 2003, Gaddafi has attempted to strengthen his ties with the West by renouncing plans to develop weapons of mass destruction and taking responsibility for past terrorist acts.

Sarkozy is the first European leader to welcome Gaddafi since he released six foreign medical workers in July 2007. The French president's involvement in the release was subjected to harsh criticism given the nature of Gaddafi's actions; the five Bulgarian nurses and one Palestinian doctor were unlawfully jailed and put on death row after being accused of deliberately infecting hundreds of children with HIV in 1999. Plans for Gaddafi's trip to Paris as well as preliminary business arrangements were made while Sarkozy visited Libya immediately after the nurses' and doctor's release. In connection with the prisoners' release, the European Union

and Libya signed a memorandum of understanding in July 2007, which also suggested areas of future collaboration between Europe and Libya. Libya's ties with Europe continued to strengthen in October 2007, when the European Union General Affairs and External Relations Council continued negotiating with Libya on a framework agreement concerning collaboration on areas of mutual interest, including migration and human rights.

The primary purpose of Gaddafi's December visit to Paris was to negotiate business with Sarkozy. Contracts signed by the two leaders will amount to revenue of approximately ten billion euros for France, with Libya agreeing to purchase aircrafts, military helicopters, armored vehicles and missiles. France is also expected to provide Libya with a nuclear reactor. During the trip, Gaddafi had an audience with the French President twice, met with parliament, and attended a dinner at the Presidential Palace on World Human Rights Day.

The French public questions whether Sarkozy has sacrificed his commitment to human rights, which he declared at the beginning of his presidency, in favor of profits by making business deals with a leader who has a questionable human rights record. Public disapproval became even more intense after Gaddafi publicly accused France of abusing immigrants at the United Nations Educational, Scientific and Cultural Organization headquarters in Paris and denied that he and Sarkozy had discussed the subject of human rights in their first meeting.

Sarkozy notably faced criticism from his own staff. Rama Yade, the French Junior Minister for Human Rights, declared that Gaddafi needed to accept that France "isn't a doormat upon which a leader, whether terrorist or not, can come to wipe off the blood of his crimes." Much of the controversy stems from Libya's refusal to extradite the terrorists responsible for the explosion of Pan Am Flight 103 over Lockerbie, Scotland in 1988. In 2003, Libya formally accepted responsibility and compensated the families of those killed in the bombing. Many believe that Sarkozy should not welcome a leader who has admitted to involvement with terrorists.

Sarkozy has attempted to justify the business transactions, claiming that the Arab world does not consider Gaddafi a dictator. Sarkozy was also effective in requesting that Gaddafi condemn terrorism. The Libyan leader promptly denounced al Qaeda's December car bombings in Algeria.

Human rights groups have responded to the growing ties between Libya and Europe with caution. They note that the European Union must set benchmarks for human rights improvements before going ahead with business negotiations.

GEORGIA LOWERS AGE OF CRIMINAL RESPONSIBILITY

President Mikheil Saakashvili signed a set of amendments to the Georgian Criminal Code reducing the age of criminal responsibility from 14 to 12. The amendments will enter into force on July 1, 2008, and were introduced in response to a recent increase in juvenile crime in the former Soviet state.

Juvenile crime in Georgia has been steadily rising recently, with an almost 50 percent increase since 2005, mostly attributed to petty theft. According to the United Nations Children's Fund's 2007 Juvenile Justice Assessment, the percentage of juvenile offenders imprisoned more than doubled between 2000 and 2006. Experts attribute the rise in teenage crime to a breakdown of traditional values following Georgia's post-Soviet transition during the 1990s.

The change in Georgian law contradicts international and European norms that generally advocate using 18 as the age of criminal responsibility and emphasize that imprisoning children should be a last resort. The United Nations (UN) has issued several guidelines, including the Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the Rules for the Protection of Juveniles Deprived of their Liberty. Several other international guidelines, including the Convention on the Rights of the Child and the European Social Charter, exemplify the profound international consensus against the imprisonment of children except under extreme circumstances.

Georgian practice, in adopting a widely criticized zero-tolerance policy towards young offenders, runs counter to international standards. Through this policy, the Georgian government is attempting to deter young people from criminal behavior by showing them that they will face punishment for their actions. Emphasizing the deterrent purpose of this law, the Georgian government claims that judges, prosecutors, and investigators with special training in dealing with youth will prosecute and try the juvenile offenders, who will then be imprisoned in penitentiaries that are separate from adult facilities.

Critics note that Georgia has yet to produce these separate facilities and specialists. The amendments contradict the UN Committee on the Rights of the Child's February 2007 recommendation that countries should not lower their age of criminal responsibility to 12. Although Georgia signed the Convention on the Rights of the Child, it still has not implemented its guidelines. Critics believe that while lowering the age of criminal responsibility will result in the imprisonment of more children, it will not deter juvenile crime.

Organizations advocating children's rights, including the UN and the European Network of Ombudspersons for Children, suggest that juvenile offenders imprisoned at an early age are more likely to continue on a criminal path throughout their lives. These organizations suggest that a more effective strategy for dealing with Georgia's rise in juvenile crime would be to adopt measures to educate, reintegrate, and rehabilitate young offenders, as suggested in the Convention on the Rights of the Child. In this way, juveniles could still understand the gravity of their behavior, but learn how to become adults that contribute to Georgian society.

CENTRAL AND SOUTH ASIA

SRI LANKAN SUPREME COURT ORDERS BAN ON NIGHTTIME CORDON-AND-SEARCH OPERATIONS

On January 7, 2008, the Supreme Court of Sri Lanka issued an order banning cordon-and-search operations under the Emergency Proclamation of 2006 between the hours of 9:00 p.m. and 6:00 a.m., except in extraordinary circumstances. The Court also ordered that at least one police

officer be present during military searches and arrests in emergency situations. The order was an interim response to a petition filed by the Ceylon Workers' Federation (CFW) in opposition to the arrests of 2,000 Tamils following a bomb explosion. While most of those arrested were released after they proved their identity, some remained in detention. The Court ordered the immediate release of 198 detained prisoners and decided to look into the CFW's petition in February.

Cordon-and-search operations allow the army to seal off areas, preventing people from entering or exiting while security forces arrest people within the secured area. Entire communities of Tamil people have been intimidated by the army during these nighttime cordon-and-search operations even though many were not part of the Liberation Tamil Tigers Eelam (LTTE), a separatist group that many identify as a terrorist organization. Human rights activists describe the operations as "collective punishment" that penalizes communities for the crimes of a few members and argue that such raids frighten and harass residents.

The Emergency Proclamation of 2006 allowed security forces to undertake search operations and gave them power to arrest and detain people for an indefinite period of time in areas of violence. This provision, which allows arbitrary searches and arrests for unspecified periods, violates Article 9 of the International Covenant on Civil and Political Rights, to which Sri Lanka is a signatory. After the Emergency Proclamation came into effect, human rights groups reported a drastic increase in disappearances and killings. In 2007, 400 Tamils were evicted from the capital city of Colombo and forced to the northern and eastern regions of the country, where Tamils have a majority. After international outcry over these forced evictions, the government allowed the evicted Tamils back into Colombo.

The Court ordered all permanent road blocks illegal and unnecessary following a petition by the Deputy Inspector General of Police requesting that the court bar parking of vehicles along a busy route to prevent road-side bombs. In December 2007, the Centre for Policy Alternatives petitioned the Court to stop mass arrests

of Tamils and asked the court to establish specific guidelines for authorities to follow in arresting and detaining persons during the emergency. These guidelines will become increasingly necessary to protect against abuses by Sri Lankan authorities now that the truce agreement with the LTTE has ended.

The Tamils have been fighting for an independent state for 35 years. In the past, the Court has been criticized for acting in collusion with the government to suppress fundamental rights by reducing criminal law safeguards. Recent cases suggest, however, that the Court is now discouraging human rights abuses against the Tamils.

HIGH COURT OF CALCUTTA FINDS LAND ACQUISITION LEGAL

The High Court of Calcutta recently held that West Bengal's acquisition of private land for a car factory was legal. In late 2006, one of the world's largest manufacturers of commercial vehicles, Tata Motors, sought the help of the West Bengal government to identify a location for a new manufacturing facility. The West Bengal Industrial Development Corporation (WBIDC), a state body, identified 1,000 acres of agricultural land in Singur for this purpose. WBIDC located farmers that could prove legal title to the land, compensated them and then transferred land ownership to Tata Motors.

In February 2007, farmers, human rights activists, and lawyers petitioned the High Court of Calcutta, arguing that the government's acquisition of the Singur land for industrial development, and the manner in which it was obtained, was illegal. Petitioners also argued that the government's land acquisitions were fraudulent and obtained against the will of the land owners. The Court held that the land acquisition was for a public purpose and thus was a bona fide exercise of power by the government.

The Land Acquisition Act of 1894 reflects the principle of eminent domain, allowing the government to acquire land for a public purpose. This principle is also manifested in Article 300-A of the Indian Constitution — replacing Article 42, guaranteeing property as a fundamental right

— which recognizes property rights as legal but not fundamental rights and allows the government to take land from landowners as long it is done fairly. The Act was later amended to allow the government to acquire land for a company “engage[ed] in any industry or work for a public purpose” in the Land Acquisition Rules. “Public purpose” is not defined but has been interpreted to include government purchase for private industry; however, the government is required to compensate those who hold legal title.

In this case, the High Court assessed whether the government acquired the land for a “public purpose.” The petitioners argued that the acquisition was in the interest of Tata Motors and did not benefit the people of Singur; thus, it did not meet the qualifications required for a “public purpose.” Furthermore, petitioners argued that the government of West Bengal acquired the land without the land holders’ consent. WBIDC refuted this position arguing that it had complied with the rules and policies and that the transaction qualified as a public purpose.

In their argument, petitioners relied on a recent Indian Supreme Court decision which held that the government of Punjab acted illegally in its acquisition of agricultural land for a tractor company. The High Court distinguished the two cases by emphasizing that the compensation in the Punjab case was minimal: the state had only paid 100 rupees (approximately \$2.50) to the land owners. Furthermore, the High Court pointed out that the tractor company actually made the land purchase directly. In contrast, the West Bengal government compensated the Singur landowners itself and then transferred the land to the WBIDC, which entered into a lease with Tata Motors. Taking these issues into consideration, the High Court held that the Singur land acquisition was acquired in the public interest, was acquired fairly, and was legal under India’s land acquisition laws.

For the past two years, similar land disputes involving government acquisition of private land for industry have led to violent protests. To date, hundreds of private industrial projects have been approved by the Indian government, and hundreds more are still pending. Petitioners in this case

plan to file an appeal to the Supreme Court of India.

UZBEKISTANI REFUGEES IN KYRGYZSTAN PRESENT NEW LEGAL QUESTIONS

After the Andijan massacre of May 2005, in which hundreds of protesting Uzbekistani civilians were killed by government troops, Uzbekistanis have been seeking asylum in Kyrgyzstan and other neighboring countries. Some refugees have obtained asylum through the Kyrgyzstani government. Many, however, have not applied for asylum in Kyrgyzstan due to fear of being returned to Uzbekistan by Kyrgyzstani authorities.

Kyrgyzstan is a signatory of several international conventions protecting the rights of refugees including the United Nations Convention Relating to the Status of Refugees. This convention obliges Kyrgyzstan not to return persons “who have a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion ... ;” are outside the country of their nationality; and are unable to return to it due to their fear of being persecuted. Kyrgyzstan and Uzbekistan are also signatories of the Minsk Agreement, signed by the members of the Commonwealth of Independent States (CIS), which includes Russia and other former Soviet republics. Under this agreement, Kyrgyzstan is bound to protect the rights of citizens from CIS countries and is prohibited from extraditing persons in cases where the persons may be tortured. At the same time, the agreement requires a signatory state, such as Kyrgyzstan, to extradite persons when a fellow CIS member state mandates their arrest for crimes in their home country, provided that a similar crime exists in the deporting country.

Uzbekistan, citing the Minsk Agreement, urges Kyrgyz authorities to return persons accused of crimes in the Andijan massacre. To maintain good ties with its neighbor and comply with its responsibilities under the Minsk Agreement, Kyrgyzstan extradited some refugees to Uzbekistan on the grounds that they faced criminal charges. Once extradited, however, the Uzbekistani government pressed political charges against them for engaging in oppo-

sition activity. Kyrgyzstan, however, does not retain a similar law banning political opposition.

Over the past two years, the Kyrgyzstani government has exhibited two different approaches to the question of refugees from Uzbekistan. On the one hand, it has granted asylum to Uzbekistani refugees under its obligations in international conventions. On the other hand, it has returned refugees to Uzbekistan under its obligations in the Minsk Agreement, under political pressure from Uzbekistan. Kyrgyzstan is torn between the international and regional agreements to which it is part. While Kyrgyzstan ponders its approach to the Uzbekistani refugees, the refugees continue to live in fear that they may be extradited to Uzbekistan.

EAST AND SOUTHEAST ASIA AND THE PACIFIC

NEW AUSTRALIAN ADMINISTRATION TO CLOSE OFFSHORE DETENTION CENTER

Symbolizing the end of the much criticized “Pacific Solution,” the Australian government began resettling 75 Sri Lankan refugees, the last group of asylum seekers detained on Nauru, a small island nation in Micronesia. As part of its 2007 platform, the newly elected Labor Government promised to discontinue the practice of intercepting refugees seeking asylum before they reach Australia and detaining them on foreign territory.

Former Prime Minister John Howard initiated the Pacific Solution in response to the 2001 standoff between the Australian coast guard and a Norwegian cargo ship that had rescued 433 asylum seekers, many fleeing the war in Afghanistan. In what is known as the Tampa Crisis, the Australian navy first refused to allow the ship to disembark, then forcibly removed the passengers and shipped them to foreign territories. New Zealand accepted 132 as refugees, while the rest were housed in detention camps in Nauru. The conservative Howard Administration diverted asylum seekers abroad before they reached Australian territory as part of a package of policies designed to deter illegal immigration. In September 2001, the Parliament passed the Migration Amendment Act,

which excluded several of Australia's island territories from Australia's migration zone, expanded the Department of Immigration and Citizenship's (DIAC) power to intercept asylum seekers at sea, and authorized the DIAC to process these people abroad.

The Migration Amendment Act limits the rights of asylum seekers who land in one of the excised island territories or who are intercepted at sea by the DIAC. Intercepted asylum seekers are only eligible for temporary three-month visas and can no longer apply for permanent Australian visas, even if refugee status is granted. The Refugee Review Tribunal cannot review intercepted asylum seekers' cases instead of the DIAC, nor can the Immigration Minister overturn visa rejections on public policy grounds.

The Pacific Solution allows Australia to skirt its responsibilities to refugees under international law. Australia's Human Rights and Equal Opportunity Commission admits that having different levels of rights for asylum seekers processed in Australia and on foreign territory violates the 1951 Convention on the Status of Refugees (Convention). Nauru is not a signatory of the Convention, which allows Australia to circumvent limitations on the use of detention. Detaining asylum seekers should only be permissible if "brief, absolutely necessary, and instituted after other options have been implemented."

Under the Pacific Solution, detaining asylum seekers is standard procedure. Some detainees from the Tampa Crisis were held in the camps for nearly four years before being resettled. Detainees on Nauru are not provided with employment, housing, education, or naturalization in a manner that conforms to international regulations. They are not allowed to work or mingle with Nauruan citizens. Almost all detainees who have remained in the camps for an extended period of time have developed some type of mental illness, which has resulted in widespread insomnia and many instances of self-mutilation. When the camps opened in 2001, Nauru closed its borders, severely restricting the possibility of legal aid, and denied visas to Australian lawyers representing the detainees.

Since 2001, Australia has detained more than 1,600 asylum seekers from

countries such as Afghanistan, Iran, Iraq, Pakistan, and Burma. The majority resettled in Australia, New Zealand, or Europe; some voluntarily repatriated; and one died in camp. Australian officials intercepted a group of 83 asylum seekers fleeing the Sri Lankan civil war in February 2007. In September 2007, one of them went to Australia for medical treatment, 75 were granted refugee status, and on January 15, 2008, 21 were settled in Australia. The other 54 recognized refugees will likely see the same resolution this year. The fate is less clear for the remaining seven who were not granted refugee status. Six face criminal charges for assaulting a Nauruan citizen.

When the Nauruan detention camps close, Australia will have spent over a billion dollars handling fewer than 1,700 refugees. The Pacific Solution was reportedly over 25 times more costly than processing asylum seekers at home. Furthermore, it failed to deter illegal immigration.

The closure of the detention centers will leave the economically destitute island of Nauru without 20 percent of its Gross Domestic Product. After 90 years of intense phosphate mining by the British, Australians, and New Zealanders, Nauru, the smallest republic in the world, has no arable land or natural resources. Since gaining independence in 1968, Nauru built financial wealth from the phosphate industry. It later lost most of its capital and became a tax haven and money-laundering center. Today 90 percent of the 13,528 Nauruans are unemployed. Nauruan Foreign Minister Kieren Keke publicly requested that Australia build a technical college on the island and provide guest worker visas for Nauruans. While Australian Federal Immigration Minister Chris Evans promised to continue to support Nauru financially, no specific plans have been finalized.

ASEAN CHARTER PROVIDES OPPORTUNITY TO STRENGTHEN REGIONAL HUMAN RIGHTS STANDARDS

Dr. Surin Pitsuwan may have more influence over the future status of human rights in Southeast Asia than any other person. Inaugurated on January 7, 2008, the Secretary General of the Association of

Southeast Asian Nations (ASEAN) begins his five-year term with the challenge of overseeing the ratification of the 40-year-old regional organization's first charter. Drafted on November 20, 2007, the Charter would incorporate the ten member nations (Brunei, Cambodia, Indonesia, Laos, Malaysia, Burma, The Philippines, Singapore, Thailand, and Vietnam) into a legal entity, creating a European Union-style economic partnership, and committing each country to shared principles of human rights and democracy.

Although the new Charter calls for establishing an institution devoted solely to upholding human rights, its weak language diminishes the prospect of enforcing international standards. The Charter does not mention norms such as those in the Universal Declaration of Human Rights and does not allow ASEAN to suspend or terminate membership of a non-compliant nation. Currently only Indonesia, Malaysia, Thailand, and the Philippines have national human rights institutions. Even countries with these institutions have difficulty upholding human rights standards. In the past few years, Philippine security forces have extra-judicially killed hundreds of political activists and members of leftist political parties.

The Charter pays great deference to the autonomy of individual governments, despite having member states — for example Burma — with long records of human rights abuses and resistance to international pressure. Continuing a tradition of non-interference and consensus decision-making, the Charter limits ASEAN's ability to protect citizens from government abuses. Most recently the Burmese delegation prevented United Nations envoy Ibrahim Gambari from briefing ASEAN on the Burmese government's bloody crackdown of wide-scale anti-government protests in 2007.

The lengthy ratification process impedes implementation of improved human rights standards. The Charter calls for all ten countries to sign within a year. Singapore signed during Pitsuwan's inauguration ceremony and remains the only country to ratify. Leaders of the Philippine Parliament threatened to reject the Charter unless the military dictatorship in Burma

continued on page 46

Samphan referred to Pol Pot as a patriot and claimed that in the Khmer Rouge government “[t]here was no policy of starving people. Nor was there any direction set out for carrying out mass killings.” Samphan was charged with crimes against humanity and war crimes for his role in the Khmer Rouge regime.

HRB

Anna Katherine Drake, a J.D. candidate at the Washington College of Law, covers the ICTY for the Human Rights Brief.

Solis et al.: International Legal Updates

Andrea Mateus, LL.M. in International Legal Studies, New York University School of Law (2007), wrote the Mikaeli Muhimana v. the Prosecutor summary for the Human Rights Brief.

Emily Pasternak, a J.D. candidate at the Washington College of Law, wrote the Aloys Simba v. the Prosecutor summary for the Human Rights Brief.

Rachel Katzman, a J.D. candidate at the Washington College of Law, wrote the Prosecutor v. Moinina Fofana and Allieu Kondewa summary for the Human Rights Brief.

Katherine Anne Cleary, Assistant Director of the War Crimes Research Office at the Washington College of Law, edited the Prosecutor v. Moinina Fofana and Allieu Kondewa, Mikaeli Muhimana v. the Prosecutor, and Aloys Simba v. the Prosecutor summaries for the Human Rights Brief.

Solomon Shinerock, a J.D. candidate at the Washington College of Law, covers the International Criminal Court for the Human Rights Brief.

Howard Shneider, a J.D. candidate at the Washington College of Law, covers hybrid and internationalized tribunals for the Human Rights Brief.

INTERNATIONAL LEGAL UPDATES *(Continued from page 37)*

takes concrete steps toward reform, such as freeing opposition leader and political prisoner Aung San Suu Kyi. Suu Kyi has been under house arrest since her National League for Democracy party won Burma’s last democratic parliamentary elections in 1990.

The secretive manner in which the Charter was drafted also hinders the ratification process. Civil service groups such as trade unions, alienated by the closed door sessions, actively oppose ratification without further input.

The Charter’s weak language and ASEAN’s undefined role necessitate strong leadership and vision from the Secretary General in order to mold ASEAN into a legitimate mechanism for upholding the rights of citizens. Described as a persuasive politician, Pitsuwan received his Ph.D. in political science and Middle Eastern studies from Harvard University in the United States, then ran for a position in the Parliament in his home town of Nakhon Si Thammarat, Thailand, where he served nine terms and was appointed Minister of Foreign Affairs. After leaving the foreign ministry in 2001, Pitsuwan was appointed as a member of the Commission

on Human Security of the United Nations and served as an advisor to the International Commission on Intervention and State Sovereignty, which produced the well-known *Responsibility to Protect* report. He also served on the International Labor Organization’s World Commission on the Social Dimension of Globalization.

Whether the new ASEAN charter remains just an academic assertion of lofty goals or an institution of fundamental human rights depends largely on the decisions made in the next five years. Commissioners from the national human rights organizations of Indonesia, Malaysia, Thailand, and the Philippines met on January 29 to establish a framework for the proposed regional body, the ASEAN Human Rights Commission. During the two-day meeting, the commissioners proposed that members of the Commission be appointed by their respective foreign ministries from a list of candidates drawn by a selection committee consisting of national institutions and civil society. The proposal will go back to the four existing national commissions and individual national governments for further discussion before being submitted to ASEAN as a whole.

HRB

Matthew Solis, a J.D. candidate at the Washington College of Law, covers the United States for the Human Rights Brief.

Jennifer Jaimes, a J.D. candidate at the Washington College of Law, covers Latin America for the Human Rights Brief.

Rukayya Furo, a J.D. candidate at the Washington College of Law, covers Africa for the Human Rights Brief.

Ari Levin, a J.D. candidate at the Washington College of Law, covers the Middle East and North Africa for the Human Rights Brief.

Morgan E. Rog, a J.D. candidate at the Washington College of Law, covers Europe for the Human Rights Brief.

Mahreen Gillani, an LL.M. candidate at the Washington College of Law, covers Central and South Asia for the Human Rights Brief.

Alex Cheng, a J.D. candidate at the Washington College of Law, covers East and Southeast Asia and the Pacific for the Human Rights Brief.